IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WP(C).No. 31401 of 2006(L)

PETITIONERS:

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1. PEECHANIKAD KARSHAKA SAMITHI,
   (REG.NO.ER NO.669/06), PEECHANIKAD,
   REPRESENTED BY ITS SECRETARY P.V.JOY,
   S/O.VARKEY, PARECATTIL HOUSE, PEECHANIKDAD,
   PULIYANAM P.O., VIA ANGAMALY.

2. JOSE PALLIYAM S/O. CHAKKAPPAN,
   (MUNICIPAL COUNCILLOR, ANGAMALY MUNICIPALITY),
   PALLIYAN HOUSE, PEECHANIKAD, PULIYANAM P.O.,
   VIA ANGAMALY.

BY ADV. SRI.WILSON URMESE
SRI.M.C.ANTONY

RESPONDENTS:

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1. ANGAMALY MUNICIPALITY,
   REPRESENTED BY ITS SECRETARY, ANGAMALY.

2. STATE OF KERALA REPRESENTED BY
   SECRETARY, DEPARTMENT OF LOCAL SELF GOVERNMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

3. THE TALUK SURVEYOR, TALUK OFFICE,
   ALUVA.

4. P.V.GEORGE, CONTRACTOR,
   S/O.VARGHESE, PALIKKODATHU HOUSE,
   PEECHANIKAD, PULIYANAM P.O.,
   VIA ANGAMALY.

R2 & R3 BY GOVT PLEADER SRI. K.M. MOHAMMED ANZAR.
R4 BY ADV. SRI.MOHAN PULIKKAL
SMT.MANJU RAJAN
SRI.PAULCY KURIAN
R1 BY ADV. SRI.V.M.KURIAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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WP.(C) No.31401 of 2006

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Dated this the 30th day of July, 2007

JUDGMENT

The main prayers in the writ petition are as follows:

> (ii) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to complete the improvement work of Peechanikkadu Nettamthodu as proposed under the IDSMT project as expeditiously as possible.
>
> iii) Issue a writ of mandamus directing the 2nd respondent to take appropriate action against the officers concerned responsible for the delay in implementation of the project.

2. The case of the petitioners in brief is as follows:

First petitioner is a Karshaka Samithi, a registered Samithi representing about 200 farmers in that area. The second petitioner is a Councilor of the Angamaly Municipality. The first respondent Municipality invited tenders for the work of Nettamthodu Reformation under the IDSMT project. By the said work it is proposed to remove the encroachments made to the vast land in both sides of the

Peechanikkadu Nettamthodu and to construct a stone wall with 2.5 meter width on both sides of the canal, and also to construct a road on the side of the canal with the excavated soil from the canal. The work was awarded to the fourth respondent at 24.3% below the estimate rate vide Ext.P1. The work has to be completed within a period of three months. But the work could not be commenced and the fund allotted under the project is about to lapse by 31.3.2007, it is stated. The fourth respondent filed Ext.P2 suit seeking release of the security deposit and damages. It is apparently their case that the work was not implemented because of the attitude of the Municipal authorities. It is stated that the authorities failed to hand over the site to the fourth respondent to commence the work. In Ext.P3 written statement the first respondent contended that some parts of the thodu had been encroached by adjacent land owners and that the third respondent had failed to peg mark the boundary of the thodu. Ext.P4 is a letter sent by the first respondent to the third respondent. Petitioner has therefore approached this court seeking the relief as already referred to.

3. Counter affidavit is filed on behalf of the first respondent inter

alia stating as follows:

The work involves construction of drain and retaining wall on either side of the canal, construction of road on one side etc. It is noticed that there are encroachments on either side of the thodu and work could be commenced only after removing the encroachments. As a preliminary step, encroached area had to be identified and demarcated by the Taluk Surveyor. Request was made by the Municipality to conduct survey. The survey and demarcation was not completed, though partially done. Therefore it was not possible to commence the work and there is no laches on the part of the Municipality. It is stated that as of now no cut off date is fixed for completion of the project under the Scheme and therefore the apprehension that the funds allotted will get lapsed by 31.3.2007 has no foundation, and it is stated that the reason for the delay in commencing the work is the delay in completing the survey and identification of the encroachments by the Taluk Surveyor and the work is not within the competence of the Municipality.

4. This court by an interim order dated 2.2.2007 ordered as

follows:

> "Smt.Tulasi Panicker submits on behalf of the first respondent that the Municipality was not able to handover the site to the fourth respondent, since it was revealed that there was an encroachment by somebody on the land where the canal has to be constructed. The Taluk Surveyor (R3) was given instructions to take measurements so that extent of puramboke could be identified.
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> Under the above circumstances, there will be a direction to the third respondent to complete the measurement of the properties in question and submit a plan to the first respondent - Municipality at his earliest and at any rate within three months of receiving a copy of this order. R1 will file a detailed statement."

5. Counter affidavit has been filed by the third respondent. Therein it is inter alia stated as follows:

That the work of measurement and demarcation of boundary started on 8.6.2006 on the basis of an application submitted by the first respondent, it was found that the areas were started and water logged on account of incessant rain. Thereafter it is stated as follows:

Upon receipt of a copy of the order of this court, immediate steps have been taken to measure the properties and demarcate the boundaries. The said work was commenced on 24.3.2007 and completed on 30.4.2007. The boundaries in sub division numbers in Block No.11, Re-survey Nos.4/8, 7/10, 8/3, 9/5, 12/7, 44/11, 50/10, 51/11, 52/8, 77/10, 76/9 and 82/8 of Angamaly Village have been re-fixed and survey marks were properly fixed in the presence of Municipal authorities. But the preparation of sketch plan was delayed due to heavy workloads in the office of this respondent, due to the shortage of staff. However, the third respondent was able to complete the preparation of sketch plan and the same was sent to the 1st respondent Municipality through a special messenger on 19.7.2007.

6. Thus the position that emerges is as follows:

Though the work was awarded to the fourth respondent as per Ext.P1, the work could not be started on account of the absence of identification of the area and demarcation of the area which was encroached. In view of the counter affidavit filed, the relevant portion of which has been extracted, it is clear that the said work is now done.

That is to say that the boundaries in the sub division numbers mentioned have been re-fixed and survey marks placed in the presence of the Municipal authorities. Ext.R3(a) is produced as the copy of the sketch plan also. But it is not in dispute that the encroachments have not been removed. It is also clear that the apprehension of the petitioner that the fund allotted for the project will be lapsed is misplaced in view of the stand taken by the Municipality in their counter affidavit. Thus the funds are still available for carrying out the work.

7. Learned counsel for the fourth respondent submits that the fourth respondent is not agreeable to carry out the work at the rate fixed way back in the year 2004.

In such circumstances, the writ petition is disposed of directing that the improvement work of Peechanikkad Nettamthode as proposed under the IDSMT project shall be arranged by the first respondent, so that the work can be completed at the earliest. In view of the submission made by the learned counsel for the first respondent that the encroachment has not been removed and the removal of the

encroachment is necessary for carrying out the work, appropriate action will be taken in accordance with law without any delay so that the work in question can be completed at the earliest. Every effort shall be made by the first respondent to complete the work within six months from today.

(K.M. JOSEPH, JUDGE)

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